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No. 91-547

Supreme Court, U.S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

KOREAN AIR LINES CO., LTD.,

Cross-Petitioner,

—v.—

PHILOMENA DOOLEY, *et al.*,

Cross-Respondents.

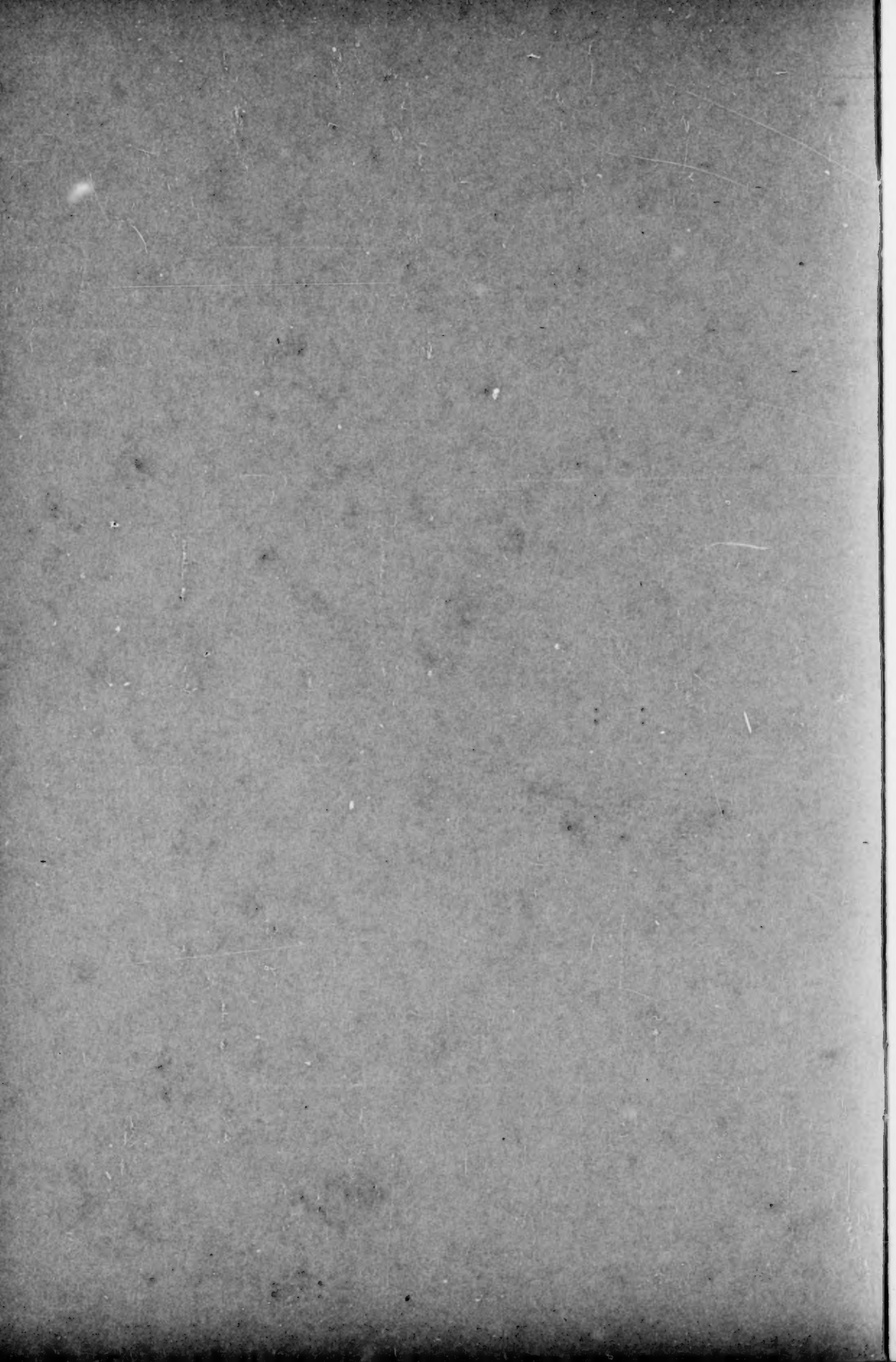
CROSS-PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF OF CROSS-PETITIONER

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Cross-Respondents, in their brief in opposition, have attempted to divert the Court's attention from consideration of the issues presented by the Cross-Petition by relating a compelling but false story based upon bits and pieces of the trial record. Cross-Respondents would have the Court view the bare legal issues presented by the Cross-Petition as laced with evidentiary issues within the discretion of the trial court and factual issues resolved by the jury.

The story related by Cross-Respondents derives almost entirely from the hearsay ICAO Report, to which is appended the Preliminary Soviet Report and the "Russian line" of flight for flight KE007, which were allowed in evidence, over objection, under Rule 803(8)(C), despite their manifest untrustworthiness, which the trial court left for the jury to consider. The Cross-Respondents' brief in opposition is a testament to the unfair prejudice suffered by Cross-Petitioner KAL by the admission into evidence of the ICAO Report, the Preliminary Soviet Report and the "Russian

line". These untrustworthy reports cannot properly be considered as evidence of what occurred to flight KE007. In fact, the ICAO Report only hypothesized as to what "might" have happened. The cause of the disaster and the events leading to the shooting down of the aircraft by the Soviet fighter aircraft remain a mystery to this day.

The unadorned legal issue on the admissibility of these reports which KAL has presented to the Court for review is not even addressed by Cross-Respondents: whether a public report is admissible under Rule 803(8)(C), as a matter a discretion or otherwise, if the sources of information (the Soviet version of the event and flight path) manifest a lack of trustworthiness? The Court does not have to get mired down in factual disputes to resolve this issue, as Cross-Respondents represent in their brief.

The Court's answer to this question is found in the landmark case of *Palmer v. Hoffman*, 318 U.S. 109 (1943), a decision the drafters of Rule 803(8)(C) explicitly referred to as the guideline for the proper interpretation and application of Rule 803(8)(C), a case Cross-Respondents have carefully chosen neither to discuss nor to cite. Rule 803(8)(C), in allowing hearsay public reports to be admitted into evidence, did not supplant the Court's decision in *Palmer*. It is simply illogical to accept that the drafters of Rule 803(8)(C) and the Court in *Palmer* would endorse as evidence, worthy of jury consideration, a hearsay report of a wrongdoer (the Soviet Union) motivated to misrepresent and the public report which incorporated and relied upon it.

The wholesale use of such hearsay public reports as evidence, as in this case, undermines and will continue to undermine the very foundation of our system of justice—a jury verdict based upon probative evidence.

The Court should review the important issues in this important case.

CONCLUSION

For these reasons, the Cross-Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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